

October 1, 1997

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON

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DECISION ON REASONABLE USE EXCEPTION, VARIANCE AND PLAT ALTERATION

**SUBJECT:** Department of Development and Environmental Services File Nos. **L96RU013, L97VA001, and L9700206**

**BEN AND CHRISTINE HAYES**

Reasonable Use Exception, Variance and Plat Alteration

**Location:** 20504 NE 5th Place (Tlingit Addition, Lot 7)

**Proposal:** Construction of a single-family residence

**Applicant:** Ben and Christine Hayes  
1200 North 38th Street  
Renton, WA 98056

**SUMMARY OF DECISION:**

Division's Preliminary Recommendation:	Approve, subject to conditions
Division's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	Approve, subject to conditions (modified)

**ISSUES ADDRESSED:**

- Variance - unique characteristics
- Reasonable Use Exception - steep slopes
- Plat Alteration - plat notes

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**A. PROCEDURAL BACKGROUND:**

1. GENERAL INFORMATION:

Applicant: Ben and Christine Hayes  
1200 North 38th Street  
Renton, WA 98056  
STR: NE 32-25-06  
Location: 20504 NE 5th Place (Tlingit Addition Lot 7)  
Zoning: R-4-P  
Requests: 1) Reasonable Use Exception from steep slope requirements  
2) Variance from the stream buffer and setback area requirements  
3) Plat alteration to revise a building restriction

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner received concurrently with the three applications under review are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the applications, subject to conditions.

3. The plat of Tlingit Addition was recorded in 1984 creating 23 lots for single-family residential development on the hillside between the Sammamish Plateau and the eastern shore of Lake Sammamish. The northernmost tier of lots lie adjacent to Eden Creek, a Class 2 stream with salmonids, resulting in the imposition of sensitive areas restrictions for both stream setbacks and steep slopes.

4. In July 1996, Earl Flatum, the owner of Lots 6, 7 and 8 within Tlingit Addition, applied to King County the adjust the boundary line between Lots 6 and 7 in order to increase the area of Lot 6 and decrease the area of Lot 7 by the amount of 3,582 square feet. This application was approved on September 4, 1996 by the Land Use Services Division manager, subject to a note stating that such approval "does not guarantee that the lots will be suitable for development now or in the future".

5. On September 25, 1996 Ben and Christine Hayes, the purchasers of Lot 7 within Tlingit Addition, applied for a reasonable use exception from steep slope requirements in order to construct a three story 5,792 square foot home within a 2,660 square foot building footprint. In further support of their application to construct a single-family residence at this location, the Hayes have also submitted a variance request from stream buffer and setback requirements and a plat alteration to revise a building setback restriction which appears on the face of the original plat. Both the reasonable use exception and variance requests are Type 2 permits which normally may be issued by DDES without a hearing. The plat alteration is a Type 3 permit requiring a decision by the Hearing Examiner but no public hearing unless requested. The three applications have been consolidated by the Hearing Examiner within a single proceeding on the basis of the documentary record established by DDES.

**B. VARIANCE**

6. Recent revisions to the variance requirements contained at KCC 21A.44.030 have eliminated the standard mandating that the "need for the variance is not the result of deliberate actions of the applicant or property owner". Accordingly, the applicant's participation in a boundary line adjustment which ceded 3,582 square feet near the southwest corner of Lot 7 to adjacent Lot 6 (thereby effectively reducing the unconstrained building site on Lot 7 by nearly a third) no longer needs to be considered within review of a variance request. Even with this loss of buildable area, however, the upland portion of Lot 7 is not wholly insufficient for siting a reasonably sized house. After eliminating required stream setbacks and the mandatory side and front yards, Lot 7 still possesses a buildable area of approximately 3,000 square feet. Although this footprint is somewhat elongated and measures about 35 feet at its narrowest point, the Hayes' "dream house" would fit within it if it were rotated towards the south and its width slightly decreased.
7. In order to grant the variance, therefore, it is necessary to examine secondary lot characteristics in addition to envelope size. In this regard, the unique circumstance which supports granting the variance is the existence of the brick retaining wall which lies within the front yard setback and is subject to community use by the homeowner's association for neighborhood signage. This brick retaining wall lies adjacent to the building envelope at its narrowest dimension, which would require the Hayes to build their house with virtually no clearance between the retaining wall and their outer front wall. Given the upscale nature of the neighborhood and the resultant value of the lot, requiring the applicants to construct their house directly adjacent to the plat entry sign would significantly detract from the value of their house, causing them unnecessary hardship and depriving them of rights and privileges enjoyed by other properties in the vicinity under identical zoning.
8. Some discussion of the applicant's ability to comply with the requirements of KCC 21A.44.030.K is also appropriate. This provision requires a finding that a variance from setback requirements "does not infringe upon or interfere with easement or covenant rights or responsibilities". Section 3 of the Covenants, Conditions, and Restrictions for Tlingit Addition states that "all structures erected shall conform with King County regulations relative to front yard, side yard, and rear lot setbacks." We find that this provision does not preclude approval of the variance requested because it refers to standard zoning boundary line setbacks and not to sensitive areas buffers. Even with the granting of a variance from stream buffer requirements, a rear yard setback of 70 feet will be maintained, which is well in excess of standard zoning requirements.

**C. REASONABLE USE EXCEPTION**

9. The analysis for the applicant's reasonable use exception request is even more straightforward. The County's sensitive areas requirements mandate a 50 foot buffer measured from the top of slopes 40% or greater, plus an additional 15 foot building setback line. The 50 foot buffer is reducible to 10 feet based on the submission of appropriate geotechnical data. At a minimum, therefore, the sensitive areas code

requires a 25 foot setback from the top of a 40% slope. Applying this 25 foot minimum setback to the applicant's property, a long narrow building envelope ranging over most of its length from between 10 and 20 feet in width is generated. This area is patently inadequate to provide a site for construction of any sort of residence. Thus the application of sensitive area requirements for steep slopes denies all reasonable use of the applicant's property. Moreover, the applicant's geotechnical studies demonstrate that the upper portions of the steep slopes are stable and nonerosive, thus allowing construction on such upper slope areas without unreasonable risk to the public health, safety or welfare.

10. The applicants' reasonable use exception request is also supported by their mitigation plan, which will result in revegetation of the stream banks just upstream from the Hayes property. As noted in the applicants' stream survey, the steep channel sidewalls in this area have slumped and eroded into the stream and would benefit from stabilization through revegetation.

#### **D. PLAT ALTERATION:**

11. Finally, the Hayes have filed an application to alter page 3 of the recorded final plat of Tlingit Addition by amending the following note which appears within the restrictions section:

"Permanent structures on Lots 7 through 9 and Lots 14 through 8 shall comply with the minimum rear yard setback required by the King County zoning codes or shall be set at least 50 feet from the top of the bank, whichever results in the greatest setback from said top-of-slope."

The applicants propose to change the reference to Lot 7 to Lot 8 so that the note would not apply to their property.

12. At issue is the plat note requirement for a minimum 50 foot setback from the top of the prominent bank. Using the 40% slope threshold, a 50 foot setback would eliminate all potential building sites from Lot 7. Also, this note was imposed upon the plat at a time prior to the enactment of current County sensitive areas requirements, which render it redundant because the current County code contains adequate provisions for the protection of steep slopes and the avoidance of unsafe construction thereupon. Accordingly, the plat alteration requested imposes no risk to public welfare and is consistent with the public use and interest. The plat alteration does not violate the restrictive covenants for the plat which, as previously noted, are concerned primarily with standard side and rear yard requirements.

#### **CONCLUSIONS:**

1. The variance application meets the standards stated at KCC 21A.44.030. Due to unique factors affecting the subject property, strict enforcement of sensitive areas stream setback requirements creates an unnecessary hardship to the property owners and deprives them of rights and privileges enjoyed by other properties in the vicinity.
2. The applicants have demonstrated that the steep slopes provisions of the Sensitive Areas

Ordinance would deny all reasonable use of their property for residential purposes, which is the principle use thereof allowed by applicable zoning. The development, as proposed, does not entail an unreasonable threat to the public health, safety or welfare and serves the public interest, with the alterations permitted hereunder to sensitive areas being both the minimum necessary to allow for reasonable use of the property and subject to appropriate mitigation.

3. If approved subject to the conditions imposed below, the proposed plat alteration makes appropriate provisions for the public health, safety and welfare and serves the public use and interest.

DECISION:

The variance, reasonable use exception and plat alteration applications of Ben and Christine Hayes are granted, subject to the following conditions of approval:

1. Development shall be in conformance with Exhibit D-6 dated July 10, 1997.
2. The development of this project is subject to all rules, regulations, policies, and codes which are not specifically modified by this approval.
3. Prior to issuance of the building permit, the applicant shall submit proof that a Notice on Title has been recorded with the King County Records and Elections Division. The Notice must be approved by DDES sensitive areas staff prior to recording.
4. The applicant shall prepare and record a revised plat drawing consistent with the requirements of KCC 19.32 which deletes Lot 7 from the building restriction note located on sheet 3 of the Tlingit Addition recorded plat. This shall occur within 4 years of the Hearing Examiner's decision and prior to issuance of a residential building permit. Otherwise, this action shall become null and void.
5. An application for a building permit shall be submitted to King County DDES and issued within 4 years of the Hearing Examiner's decision. Otherwise, this action shall become null and void.
6. A detailed grading plan shall be submitted with the building permit, showing the limits of site clearing, existing and proposed contours and best management practices in conjunction with the King County Surface Water Design Manual requirements for sedimentation and erosion control.
7. The geotechnical engineer shall be on-site to observe any significant earthwork for compliance with the report's recommendations and project plans. The engineer shall be prepared to issue daily field reports that either confirm that all site work has been done in accordance with the plans and recommendations or describe any deviations that occurred and whether they were appropriately dealt with to successfully avoid any adverse impacts to the site or stream.
8. The site earthwork shall be completed and the site stabilized prior to October 1. In the interim, all exposed soils shall be treated per the design manual requirements for wet weather work.
9. The project design and construction shall comply with the requirements of KCC 21A.24 for

10. Following building permit approval, a preconstruction conference shall be held before any work commences on-site. In attendance shall be the contractor (and earthwork subcontractor, if applicable), the owner, the geotechnical engineer, the King County building inspector and the geologist. Please make arrangements at least 48 hours in advance.
11. The applicant shall work with KCDNR to purchase and plan 40-50 native trees along the banks of Eden Creek in the general vicinity of the Tlingit subdivision as described in the memorandum from John Bethell, KCDNR, to Steve Bottheim and Mason Bowles, DDES (see Attachment 5 to the Staff Report). In the event KCDNR does not participate in this activity, the applicant will be required to complete the planting and establishment as described in the December 6, 1996 report prepared by the Watershed Company for this site.

ORDERED this 1st day of October, 1997.

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Stafford L. Smith, Deputy  
King County Hearing Examiner

TRANSMITTED this 1st day of October, 1997, to the following parties and interested persons;

Ben and Christine Hayes	Achim Sauer	Martin Lammers
Pauline Tyack	Marilyn Cox, LUSD/DDES	Lisa Lee, LUSD/DDES
Steve Bottheim, LUSD/DDES	Mason Bowles, LUSD,DDES	Gary Kohler, LUSD/DDES
Pam Dhanapel, Building Services/DDES		

#### NOTICE OF RIGHT TO APPEAL

In order to appeal the plat alteration decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before **October 15, 1997**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before **October 22, 1997**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar

days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

Pursuant to Chapter 20.24 of the King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding reasonable use exceptions and variances. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

The following exhibits were entered into the record for these applications:

- Exhibit No. 1. Department of Development and Environmental Services File No. L96RU013
- Exhibit No. 2. Department of Development and Environmental Services File No. L96VA001
- Exhibit No. 3. Department of Development and Environmental Services File No. L9700206
- Exhibit No. 4. Department of Development and Environmental Services File No. L96L0094

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